IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1480 OF 2004

Prakash P.Malvankar
Ex-Director-Commercial
and two others ..Petitioners

Vs.

Vishwanath Revansiddha Shastri
and Anr. ..Respondents

....

Mrs. Manjula Rao i/b M/s.Joseph and Associates for Petitioners
Mr. Subhash Jha with Mr.Ghanshyam Upadhyay i/b M/s. Law Global for Respondent no.1
Ms.S.V.Gajare A.P.P. for the State

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**CORAM: SMT. V.K. TAHILRAMANI, J.**

**DATE OF RESERVING THE ORDER : 23.06.2005**

**DATE OF PRONOUNCING THE ORDER : 04.07.2005**

**P.C.**

1. Heard the learned advocate for the petitioners-original accused and the learned advocate for the respondent no.1-original complainant and learned A.P.P. for the State.

2. The petitioners are seeking quashing of

proceedings relating to C.C.No.55/S/2003. In the said case the process was issued by the learned Metropolitan Magistrate, 46th Court, Mazgaon, Mumbai under Section 138 of Negotiable Instruments Act.

3. Only one contention has been raised by the learned advocate for the petitioners i.e. at the time when the offence was committed the petitioners were not directors of the company hence, the petitioners were not in charge of or responsible for the conduct of the business at the relevant time. Reliance has been placed on form no.32 which is at Annexure-E to the petition to show that the petitioners were not the directors of the company at the relevant time.

4. In the case of **Raj Lakshmi Mills V.Shakti Bhakoo reported in (2002) 8 SCC 236,** the High Court had quashed the proceedings on the assumption that "X" was not in charge of or responsible for the conduct of business of the firm. The Supreme Court has observed that "We are of the opinion that at the stage of summoning when evidence was yet to be

led by the parties, the High Court could not on an assumption of facts come to a finding of fact that the accused was not responsible for the conduct of the business. On this ground alone, these appeals are allowed and the impugned decision of the High Court is set aside".

5. Admittedly the cheque was issued in November, 1998 and the petitioners resigned on 24.1.1999. In the present case it is an admitted fact that the cheque which has been dishonoured was issued in relation to the transaction which admittedly took place when the petitioners were directors of the company. It is not disputed by the petitioners that the petitioners were not incharge of the day to day affairs of the company at that time. However, it is submitted that when the cause of action arose they had already resigned and therefore cannot be held liable. On the other hand, the learned advocate for Respondent no.1-complainant disputes that the petitioners were not responsible for the conduct of the business when the offence was committed. In my view when the complainant has disputed the factum of

resignation, it becomes a triable issue and it cannot be decided without leading evidence. It may also be stated here that form 32 for the present petitioners is different from the form 32 which has been produced in the case of other accused. Hence, the case of the present petitioners cannot be equated with that of the other accused persons. Hence, the said Form 32 cannot be relied upon in the present case especially looking to the fact that the complainant has disputed the fact of resignation of the present petitioners.

6. Moreover, in the case of State of **M.P. Vs. Awadh Kishore Gupta & Ors. reported in (2004) 1 SCC 691,** the Supreme Court has observed that annexures to the petition cannot be termed as evidence without being tested and proved and hence, these annexures should not be acted upon by the High Court. So also, in the case of **Chand Dhawan V. Jawaharlal and Ors. reported in (1992) 3 SCC 317**, it has been held by the Supreme Court that the Court should not act on the annexures to the petition where the documents are not admitted or accepted by the complainant. In view of the facts

of this case and the observations of the Supreme Court in the various decisions cited above, I am of the opinion that no reliance can be placed on the document annexed i.e. Form 32 at this stage.

7. Reliance has been placed on various decisions of this Court in respect of Form 32. However, in view of the decisions of the Supreme Court quoted above, in my view, at this stage, when the evidence has yet to be led, it would not be proper to rely upon the annexures which have been annexed to the present petition. Thus, in view of the observations in the various decisions cited above and the facts of this case, I am of the opinion that no reliance can be placed on the documents which have been annexed to the petition. In this view of the matter, I find no merit in the petition and the same is dismissed.

8. At this stage, the learned advocate for the petitioners states that all the petitioners are above 60 years of age and she seeks exemption from personal appearance before the trial Court in

respect of these petitioners. In this view of the matter, the trial Court shall grant exemption in respect of personal appearance to the petitioners unless the Magistrate is of the opinion that their presence is absolutely necessary. In such a case, on notice being given to the petitioners, they shall remain present before the trial Court.

[ SMT.V.K.TAHILRAMANI,J.]